Judge Parker Argues That There Is Nothing in the Law Which Authorizes the Court to Order Either a Recount or a Recanvass-Says His Contrary Optnion Was Mere Dietum and That After Deliberation He Had Come to the Conclusion That It Was Erroncous.

ALBANY, Dec. 11 .- Argument began before the Court of Appeals this afternoon on the Appellate Division's decision granting a recanvass of the vote in five election districts as asked by W. R. Hearst. This is a test case and if Mr. Hearst wins in the Court of Appeals it means that he will ask for court orders opening all the boxes in New York city and compelling the election officers to reconvene and recanvers and recount all the ballots cast at the November election; in other words, to do over again their work of election night.

Justice Amend first granted an order for a recount of the ballots which the Hearst men declared permitted a recanvass as well as a recount of the ballots in the boxes and also of the void and protested ballots. Corporation Counsel John J. Delany protested against this construction of the order and obtained an amended order which confined the treatment of the ballots in the boxes to a recount and not a recanvass. In effect Justice Amend's second order declared that the decision of the election officers that the ballots in the boxes were valid should stand and that all that could be done under his order was to recount the ballots and see if they properly were credited to the several candidates.

The Appellate Division reversed Justice Amend's second order and affirmed the first one, but took occasion to say that if the question was an original one it would decide that there could be neither a recount nor a recanvass of the ballots in the boxes and that all the courts could pass on were the void and protested ballots. The Appellate Division in affirming the first Amend order said it did so on the authority of the decision of the Appellate Division of the Second Department in the Stiles case in 1901, where ballot boxes were opened and the ballots recanvassed and recounted in the Mount Vernon Mayoralty contest. This decision was never passed upon by the Court of Appeals.

The vital question before the Court of Appeals now is whether it will uphold the Second Department Appellate Division decision in the Stiles case, which would permit a recount and a recanvass, or whether it will adopt the views of the Appellate Division of the First Department on the Amend order, which denies the right to either recanvass or recount any but the void and protested ballots.

Corporation Counsel John J. Delany, his assistant, Arthur C. Butts, and Alton B. Parker appeared before the Court of Appeals to oppose the Hearst contention. To the Hearst brief were signed the names of Frank S. Black, Clarence J. Shearn, Austen G. Fox, William Allaire Shortt, Edward B. Whitney, Henry De Forest Baldwin and Henry Yonge, all of whom were in court with the exception of Messrs. Whitney and Baldwin. Judge Parker and Mr. Delany presented the McClellan arguments and Frank S. Black and Austen G. Fox replied. The Judges of the court who listened to the arguments were Chief Judge Cullen and Judges O'Brien, Vann, Haight,

Gray, Bartlett and Werner, four Republicans and three Democrats.

Judge Parker in his argument for a reversal of the decision of the Appellate Division declared that body was unanimous vision declared that body was unanimous in its opinion that the order directing the recount and canvass should be reversed and that it would have so decided if the matter had come before it as an original proposition, but its members feit constrained to follow the decision of the Appellate Division, Second Department, which had decided that a recount could be so directed in a proceeding case. rected in a preceding case.

He contended that there was nothing in

Section 84 of the election law which authorizes the court to direct either a recount or a recanvass. A recount could not be or-dered, he said, even though discrepancies

without a recanvass, in accordance with Justice Amend's second and amended

Justice Amends second and amended order.

Judge Parker, referring to his own opinion when a Judge of the Court of Appeals, which favors the authority of the court to order a recount and recanvass when the election officers had felled to make the taily sheet totals lagree with the ballot clerk's return, said that that statement was mere dictum and that that particular question was not decided by the court at that time. He said that, after mature deliberation, he had come to the cenclusion that this dictum, was erroneous. A smile passed over the countenances of the crowd in the court room, provoked by Judge Parker's bland manner in thrusting his own opinion aside.

bland manner in thrusting its own opinion aside.

Mr. Delany in his argument contended that it was the settled policy of the State that the result of each election should be ascertained on the face of the returns. If any other course were pursued it would involve the elections of the State in endless litigation and would tie up indefinitely the result in many instances. He said that Mr. Hearst had ample remedy in quo warranto proceedings to determine his claim to the office of Mayor. He said:

"If it be successfully maintained that after the vote of an election is cast, and statements of the canvass thereof made by election inspectors are filed, the Court can reopen boxes and cause mispectors of election to recount and recanvass ballots

statements of the canvass thereof made by election inspectors are filed, the Court can reopen boxes and cause inspectors of election to recount and recanvass ballots therein which have been deposited and scaled in boxes as provided in Section 3 of the eection law, then the whole system established by the Legislature is demolished and the protracted judicial canvass of votes, possibly in every election district of the State, deplored by the Appellate Division in its opinion, is substituted in its stead, with accompanying possibilities of fraud, crime and tamult which it is appalling to cotemplate.

Ex.-Gov. Black in his argument declared that as the duty of the inspectors to recount in case the ballot clerks' total and the tally sheet total did not agree was statutory, a writt of mandamus was the proper remedy to compel a complimate therewith. The aim of the election law, he said, was to place election officers where the direct control of the courts and co compel them to correct mastakes when made. He held that the result of an affirmative decision would not tend to overload the courts with election cases. It must be presumed, he said, that the Legislature in framing the election law intended that the elections should be pure and regular and that the courts should be charged with the duty of keeping them so, at whatar and that the courts should be charged with the duty of keeping them so, at what-ever cost to less important interests of in-dividual suitors. He declared that the order of the court below should be af-

firmed.

Mr. Fox said that the purity of elections required that the relief sought should lie in the courts.

Shall it be said that what a candidate has gained by stealth he may keep because the election officials who stells it from him adjourned before the theft was discovation. adjourned before the theft was discovered?" he said. "A duty which the election

CO THE WHITING

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and the general household, will appeal to those who are seeking distinctive gifts. Our collection of these articles will be found exceptionally varied and complete.

BROADWAY & 19TH ST.

officers ought to have performed immediately had they discovered the errors on the tally sheets on election night remains a duty none the less whenever the error is iscovered before the certificates of election

Mr. Fox ruffled the temper of the Court when he said that a new industry, possibly, was opened up—for retired Judges to come before the Court and endeavor to have their before the Court and endeavor to have their intellectual brethren withdraw from a position which they had assumed upon a legal proposition. He referred to the opinion written by Judge Parker, when he was Chief Judge of the Court of Appeals, in the Brink case, in which it was held that a recount could be ordered. But Judge Parker in his argument had said that the expression in his opinion favoring a recount was mere dictum, and not essential to the decision of the Court in the Brink case, while Mr. Black on the contrary, asserted that that opinion

on the court in the Brink case, while Mr. Black on the contrary, asserted that that opinion had been approved by a majority of the Judges of the Court of Appeals and not until to-day did Judge Parker repudiate it. Chief Judge Cullen reproved Mr. Fox for his indirect reference to Judge Parker after Mr. Fox had further said that the Parker cripion was made on the eye of a Presidenopinion was made on the eve of a Presiden-tial election, in the result of which the Judge who wrote it was not entirely disinterested. Judge Parker was a candidate for President

CANVASS PRACTICALLY DONE, BUT AWAITS

DECISION The order requiring the inspectors, poll clerks and ballot clerks in seventeen election districts to show cause why the ballot boxes in those districts should not be opened on account of discrepancies in the returns, which the Hearst lawyers obtained on Saturday, is returnable before Justice Stover Saturday, is returnable before Justice Stover to-day, but will not be argued until the Court of Appeals decision is announced.

If the Court of Appeals decides against the Hearst people the McClellan lawyers believe that the results of the canvass will be declared by the end of the present week and that Mayor McClellan will get his certificate at once. It was said at the Board of Elections yesterday that the result of the vote would be known quickly if the court decided against the recount. If the decision should be the other way it will be for the courts to say when the result of the canvass shall be declared.

JOE JEFFERSON'S ESTATE.

Executors of the Actor's Will Try to Foreclose a New Jersey Mortgage.

Edward G. Black and Sarah A. Jefferson, executors of the estate of Joseph Jefferson. the actor, have begun a suit for the foreclosure of a mortgage of \$15,000 on the property of John B. Miller and his wife, Isabelle C. Miller, at Allendale, N. J. The mortgage was made on Deccember 12, 1895 It matured in 1898 and was not paid.

When the case came up in Chancery Chambers, Jersey City, yesterday, the Millers in their answer said that the actor made a verbal promise that he would never foreclose the mortgage without giving them six months notice. They said that he never

I do not want to make any one suffer. and I do not want to make you suffer.

The case went over for two weeks.

dered, he said, even though discrepancies exist between the tally sheet and the ballot clerk's return. He held that Section 84 required that the recount should be finally made by the inspectors on the hight of election and that if an actual mistake was made it was the duty of the inspectors then and there to make a recount.

If the failure to recount as provided in Section 84 may be enforced by mandamus after the ballots have been placed in the box and it is locked and sealed why may not every act of omission the enforced by mandamus, he asked.

Judge Parker held that if the order of the court below was affirmed it should be modified so as to provide for a recount without a recanvass, in accordance with Justice Amend's second and amended

The blow blinded the fireman, as his left eye is of glass.

As Schroeder reeled his assailant struck hun again and he fell. Then the two men ran out of the place without uttering a word. A might watchman later found Schroeder somi-conscious, and with the help of another man they carried him to the Eastern District Hospital, where it was discovered that Schroeder, besides having lost his sight, had sustained concussion of the brain. His condition was pronounced brain. His condition was pronounced ous. The pelice of the Bedford avenue on were unable to secure a clue to the

SAVED DRIFTING SLOOP.

Lifesavers of Sandy Hook Put Their New Boat to Practical Use.

SANDY HOOK, N. J., Dec. 11 .- The Rescue, a new lifeboat propelled by a 25 horse-power gasolene engine, was put to actual service to-day. The boat ran alongside the sloop Minnie Van Name, which yesterday had gone out from Gravesend Bay on a fishing excursion but had been driven south after breaking her main boom and splitting

breaking her main boom and breaking her foresail.

The Minnie Van Name had set her flag unled down. The revenue cutter Mohawk went out last night in search of the sloop will have did not find her. The lifesavers have building at Jay and Greenwich streets.

CITY IN PERIL OF BIG FIRE.

NEEDS NEW ALARM SYSTEM AND MORE ENGINES AND WATER.

Committee of Twenty Reports to Board of Underwriters That the East Side Tenement District Jeopardizes Manhattan Borough—Building Insulation.

The committee of twenty appointed by the National Board of Fire Underwriters for the purpose of investigating risks in Manhattan made a report yesterday in which it reaches the conclusion that fire protection in New York is wholly inadequate and danger of a conflagration similar to that of Chicago and Baltimore hangs over the city. The committee also reports that New York city is threatened by a water famine, that the mains are no longer adequate, and that the fire alarm system and the building laws are not what they should be.

The committee's report is long and it abounds in detail. The danger, according to the report, is not so much above Twentythird street, although Central Park is the only effective fire stop. Below Twentythird street the situation is reported as very serious. To quote the report:

The most serious menace to the cityas a whole is the lower East Side, especially that part south of Delancey street; the exposure from this section to the lower end of the island has been much underestimated, and that conflagrations of record dimensions have not already occurred must be attributed largely to the vigilance of the Fire Department and the fact that fires have been caught in their incipiency. This area, a square mile in extent, subject to practically any fire getting havend department, control fire getting beyond department control, with its crowded tenements full of foreign, low grade and ignorant communities, to-gether with the present inadequacy of water supply and scarcity of fire alarm boxes, forms to the high value sections west a mennace the seriousness of which has not been appreciated. In this connection at-tention is called to the low water pressures and the distribution system in this territory.

The same conditions prevail, though with less severity, in the West Side tenement section, especially at the lower end.

In general, the safety of Manhattan is geopardized by these three sections and by some unsatisfactory conditions in various other parts. Owing to the uniformly high values and general congestion and the certain dire consequences bound to follow a general conflagration in this city immediate steps should be taken to improve conditions. The importance of the city naturally leads to the expectation that novel methods of improvement will be advocated, but the needs of the situation are such that time should not be wasted upon untried schemes or in searching for unique remedies when a simple homely cure is at hand. The city foreclose the mortgage without giving them six months notice. They said that he never made a demand for the money, although the mortgage was long overdue, and contended that a clause in his will provided that none of his property was to be sold until a year after his death.

Mrs. Miller said that in a talk with Mr. Jefferson she told him that if he demanded his money without notice she and her husband might have trouble in raising it. Miller said that the actor replied:

"I do not want to make any one suffer."

The committee believes the Fire Department of Manhattan and The Bronx capable as a whole, but the number of fire companies with the population is small as a whole, but the number of fire companies compared with the population is small and the expenses of the department are low. An equipment of ninety-three engines, forty-nine ladder trucks, five fireboats, nine chemical engines and four water towers, the report declares, is scarcely commensurate with the size of the city. The fire alarm system is declared defective, antiquated and only moderately reliable.

Capt. John Stephen Sewell, appointed by the president to assist the committee in the investigation, concurs with all its findits investigation, concurs with all its find-

HUMMEL SEEKS A STAY.

Application to Be Made To-day to Justice Rogers.

John B. Stanchfield will ask Justice Rogers, in the Supreme Court, Criminal Branch, today for a stay for Abraham H. Hummel, pending Hummel's appeal from Justice Truax's decision denying him a change

of venue.

Notice of the motion was served on the District Attorney last Saturday, and it was expected that it would come up before was expected that it would come up before Justice Truax yesterday, but he has gone to Lakewood for ten days.

Hummel's trial is set for Wednesday, but it cannot go on on that day, even should Justice Rogers refuse to grant a stay. It will take at least a week to get a special repobled takesman.

panel of talesmen. Elbow Room for the Post Office.

The New York Post Office made another step yesterday toward the occupancy of the entire Post Office Building, when the postal printing office, the Railway Mail Service printing office and the supply depot, previously occupying the fifth floor, moved out to make room for expanding postal needs. Not long ago the Railway Mail

MELLOWED BY 10 YEARS REPOSE IN THE WOOD 1 TI Crop of 1895 Served and Sold Everywhere In Glass Only

NEW YORK & KENTUCKY CO.

MR. M'ADOO ON NEWSPAPERS. Poultry Gazette" for His-All the Other

Are Too Inscourate, He Says. Commissioner MeAdoo was very much concerned yesterday at the noon interview with the reporters over the inaccuracy of

newspapers. Said he: "I shall not be able in the future to discuss police matters so freely with the reporters. The newspapers are inaccurate. can show fifty cases where they have made mistakes and misquotations and have not printed any retraction. The only paper I can depend upon in future is the

Poultry Gazette."

The Commissioner referred to a story about his trying to steal Central Park. The headline seemed to worry him. The entire speech was brought on by the timid complaint of a reporter that the rule requiring precincts to communicate news of an accident within an hour had been violated by several hours and that the news was then sent down to Police Headquarters in an inaccurate manner. in an inaccurate manner.

in an inaccurate manner.
"You'll have to make a written complaint," said the Commissioner. "I won't listen to any other form of complaint from you hereafter. There is no news this morning, gentlemen. I can't make news; but then perhaps you can."

PIANIST CUT HIS THROAT. Entil Frank, Vietim of Overstudy, Staggers

Dying to His Parents. Worn out and despondent from over-study, Emil Frank, a pianist, 31 years old, committed suicide early yesterday morning at his home, 531 East Eighty-eighth street, by cutting his throat with a razor, severing the jugular vein. On Sunday night he gave a musical soirée, at which many of his friends were present. He then seemed in good spirits and played unusually well.

Subsequently he went to his room, and apparently went to bed before 11 o'clock.

He got up about 7 o'clock yesterday morning, and a few minutes later staggered into the dining room with the blood streaming from his throat. His father and mother country him as he was falling. The young caught him as he was falling. The young man exclaimed:
"I am tired of it all. This is the best way

e the arrival of a doctor Frank had

ROYAL Baking Powder

Delicious Biscuit, Griddle Cakes and Doughnuts

BROTHER DOOLEY BANISHED. Sergeant Whirled From Tenderloin Tur-

moll to the Peace of Bushwick Ave. Commissioner McAdoo announced yesterday that he had transferred Sergeant William J. Dooley of the Tenderloin to the Bushwick avenue precinct, in the outskirts of Brooklyn. One of the new sergeants, Himmell, takes the job under Capt. Dooley. "It's not always good policy to have relatives in a precinct together," explained the Commissioner.

the Commissioner.

Sergt. Dooley was recently on trial before
Deputy Commissioner McAvoy for having
accepted inadequate bail in a felony case.
The Commissioner denied that this had
anything to do with his transfer.
The Commissioner also announced that
he would start in examining natrolmen he would start in examining patrolmen for promotion to roundsmen. There are sixty-eight vacancies.

Justice Courtney Seriously III.

Justice John Courtney of the Court of Special Sessions is seriously ill at his home, 157 Prospect place, Brooklyn. He has not been in good health for several years.

H.O'Neill & Co.

Commencing Saturday, December 16th, and until Xmas this store will be open evenings until 9:30. - Those who can, however, should shop in the morning.

Christmas Fur Suggestions

The moderately priced to the very best in full assortments.

	Black Lynx Sets— Large Muff—Two Yard Scaris
	Isabella and Sable Fox Sets— Large Muff, Long Double Scarf
	Alaska Sable Sets— Large Muff and Long Scarf
	Sable Marten Sets— Large Mutt and Shawl \$25.00
,	Eastern Mink Sets— Large Muff and Scarf
	Sable Squirrel Sets— Large Muff and Long Scarf \$15.00
	Natural Squirrel Sets— Large Muff and Scarf \$10.00
	Ermine, Caracul, Baum Marten, Chinchilla

and Sable in all the new shapes.

For Xmas Why Not Give Shoulder Shawls and Capes

Shawls. Honeycomb Shawls, in white, gray Fancy Worsted Capes for Evening \$1.15 to \$2.75.

Shoulder Shawls, in white and black,

59c to \$3.95.

Chinchilla hand-made Worsted Shoulder Shawls,

Wear-hand-made-in combinations of white with light blue, white with pink, and all white,

Capes.

\$2.98; value 4.75 Hand-made Shoulder Capes in black

and white, \$1.25. \$1.25 to \$2.75.

Sixth Ave., 20th to 21st St., N. Y.

FLINTS FINE FURNITURE FOUNDED 1840

UNIQUE HOLIDAY GIFTS In our warerooms gifts appropriate for men, women and children are shown in abundance.

The Flint imprint on Christmas gifts stands for correctness and quality.

Purchases made now, while the variety from which to select is greatest, will be held until the proper time for delivery.

FOR WOMEN Martha Washington Sewing Tables, Colonial Candlesticks, Dressing Tables, Chiffoniers. Desks, Prayer Stools. Music Cabinets. Tea Wagons, Antique Silver Candlesticks, Chafing Dish Stands,

FOR MEN Club Chairs, Cellarettes, Shaving Stands, Ice Pails, Bachelor Chiffoniers. Cigarette Magazines, Desk Sets, Cigar Boxes, Morris Chairs, Pillows, Divans,

Tapestries. Oriental Rugs. (TEO

WEST 23rd STREET

B. Altman & Co.

GLOVES AND HANDKERCHIEFS FOR WOMEN, MEN AND CHILDREN.

Women's and Men's Gloves for general street wear, afternoon and formal evening dress, golfing and motoring. Women's, Men's and Children's Gloves of glace and suede kidskin, made by Trefousse & Cie., Chaumont,

Women's One and Two-Clasp Gloves of Glace Kidskin, black, white and tan \$11.00 per dozen.

Men's Handkerchiefs, in plain, hemstitched and initialed styles, sheer plaids, Damasse and tape border effects, silk and fancy colored textures. Women's Handkerchiefs, with Irish, Appenzell and French embroidery, or trimmed with real Valenciennes lace. Children's Handkerchiefs in appropriate styles; also the following selections of linen handkerchiefs for men and women, at considerable less than the usual prices:

Women's Plain Hemstitched Linen Handkerchiefs, 75c. and \$1.25 per box of six.

Women's Initialed Linen Handkerchiefs, \$1.00 and \$1.15 per box of six.

Men's Plain Hemstitched Linen Handkerchiefs, \$1.00 and \$1.35 per box of six.

> Men's Initialed Linen Handkerchiefs, \$1.15 and \$2.25 per box of six.

Women's Embroidered Linen Handkerchiefs, 25c. each. (Rear of Rotunda, First Floor.)

COLORED DRESS FABRICS.

Dress Patterns, in a variety of styles, suitable for gifts, ranging in price from \$3.00 to \$10.00 each; also a selection of plain and fancy materials, including ladies' cloths, cheviots, mixtures and silk and wool effects in lengths suitable for waists or skirts, at 50 per cent. less than the usual prices.

(Colored Dress Goods Department.)

Nineteenth Street and Sixth Avenue, New York.

MOULE CLOTH OVERCOAT TO ORDER, SILK LINED, \$25.

It looks and it will wear like a \$100 coat. Let us prove it—a trial costs nothing. Full Dress Suit, silk lined, \$40. Tuxedo \$35, made

of finished or unfinished imported drapes; or the combination suit, with Tuxedo, \$62.

A splendid Christmas gift, suit or overcoat: we have records of every measure for the past twenty-eight years. Samples and "Pointers on What to Wear," mailed to any address.

Broadway and Ninth Street.

B. Altman & Co.

FURS AND FUR GARMENTS

An important sale of Women's Furs and Fur Garments at Exceptionally Low Prices, as mentioned below, will be held

This day (TUESDAY), December 12th:

Persian Lamb Coats, with N	Mink or Baum	Marten	Collars,	\$135.00
Caracul Coats		÷		115.00
Natural or Sable Squirrel Coa	ats -	•	• • •	58.00
Cloth Paletots, black and colo Persian Lamb, Caracul, Bo				40.00
Cloth Paletots, black and co of Black Lynx, Persian Lan		ned, wit	h collars	50.00
Cloth Paletots, in black, with of Black Lynx, Persian Lan		rei finin		68.00
Alaska Sealskin Coats		-	٠	275.00

Also the following Neckpieces and Muffs:

	NECKPIE		ES.	MUFFS.		
Ermine -		:	\$25.00	\$40.00		
Mink -	-	20.00 and	25.00	23.00 and 38.60		
Black Lynx -	-	16.00 and	25.00	19.00 and 22.00		
Blue Lynx -	-		15.00	18.00		
Persian Lamb	•	12.00 and	18.00	13.00 and [9.00		
Beaver -	•		10.00	13.00		
Alaska Sable		- 8.50 and	16.50	8.75 and 10.50		
Brown Squirrel		- 8.00 and	20.00	10.00 and 15.00		
Black Caracul		- 7.09 and	13.00	· 8.00 and 14.00		
Persian Paw			7.00	8.00		
Gray Squirrel	•	 6.50 and 	12.00	8.50 and 10.00		

Aineteenth Street and Sixth Avenue, New York.